

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	Criminal No. 1:25-CR-10037-RGS
	)	
v.	)	
	)	
DAVID SMERLING	)	
	)	
	)	

**OPPOSED MOTION TO TEMPORARILY MODIFY RELEASE CONDITIONS**

Now comes the defendant, David Smerling, by and through undersigned counsel, and moves to temporarily modify his release conditions to permit him to travel to Mexico as part of an annual family trip. As outlined below, Mr. Smerling proposes temporary modifications to his release to permit him to travel to Mexico from February 10 to February 19, 2025. Pursuant to Local Rule 7.1, undersigned counsel conferred with counsel for the government and understands that the government opposes this Motion. Mr. Smerling requests that the court conduct a hearing under seal on this motion.

As grounds, undersigned counsel states that Mr. Smerling has been supervised on, and compliant with, conditions of release by both U.S. Pretrial Service and Probation since mid-January 2025. He lives in Lexington, Massachusetts, with his wife Abbe, his daughter Rebecca, his son in law, and their minor children. Mr. Smerling's current release conditions prevent him from, *inter alia*, traveling internationally.

Mr. Smerling and his family state that they pay for a time share at a hotel in Mexico which they have been traveling to since 2015. They visit annually – Mr. Smerling and his wife Abbe, their daughters, their sons-in-law, and their grand-children. The family states that this trip was planned in mid-2024, and flight tickets and payment arrangements were made over the summer. Proof of tickets and their purchase dates are attached to this motion as D.E. #1. Mr. Smerling, his

wife, and his children look forward to this family trip every year, and it holds special significance because it [REDACTED]

[REDACTED] Mr. Smerling and his family members have written letters in support of this request, which are attached as D.E. #2.

Mr. Smerling will travel by [REDACTED] from Boston, Massachusetts to Cancun, Mexico, leaving on February 10, 2025. He will return on [REDACTED] from Cancun, Mexico to Boston, Massachusetts on February 19, 2025. [REDACTED]

[REDACTED]

Mr. Smerling thus seeks to modify conditions 7(d) and (f) as described in the Order Setting Conditions of Release, which required him to surrender his passport to Probation and to restrict his travel to Massachusetts.

Mr. Smerling requests that these conditions be temporarily modified to: 1) permit him to travel to Mexico from February 10 to February 19, 2025; 2) retrieve his passport from U.S. Pretrial Services and Probation for the duration of such trip; 3) and provide his itinerary, along with the address where he intends to stay, to Probation in advance of any such trip.

As referenced above, undersigned counsel conferred with the government about Mr. Smerling's proposed temporary modifications to his release conditions and understands that the government opposes this request. The government has requested that the following statement in opposition be included in the motion:

“While the government is sensitive to the reasons for Mr. Smerling's request for the return of his passport and to travel to Mexico, the government opposes the motion to travel based on the risk Mr. Smerling will not return given (a) the limited time that Mr. Smerling has been on release (two weeks), (b) the likelihood of additional charges in the near future,

which has been communicated to his attorney, and (c) the potential penalties should Mr. Smerling be convicted (a Guideline sentencing range of 57-71 months). The government has consulted with the Probation Office and understands that the Probation Office opposes the motion as well.”

Counsel is mindful of the reasons submitted by the government. However, these objections do not bear out a reason to deny this temporary modification. This trip has been planned since June of 2024, and is not an attempt by Mr. Smerling to flee the jurisdiction, but rather for his family to be together and seek respite during an especially difficult anniversary. Further, while he has only been under supervision for two-weeks, probation confirms that he has been compliant with conditions. Finally, Mr. Smerling is a 74-year-old grandfather whose only goal in this trip to Mexico is to spend quality time with his wife, his three daughters and their husbands, and his seven grandchildren.

For these reasons and any other the Court deems just, Mr. Smerling requests that his release conditions be modified to permit him to travel to Mexico for nine days with his family. He requests a hearing on the motion, to be conducted under seal.

Respectfully submitted,  
DAVID SMERLING  
By His Attorney,

Dated: February 5, 2025

/s/ Eliza Jimenez  
Eliza Jimenez  
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Boston, MA 02210  
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**CERTIFICATE OF SERVICE**

I hereby certify that this document will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on February 5, 2025.

/s/ Eliza Jimenez  
Eliza Jimenez